

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

DONNA JOHNSON, and TOM JOHNSON,	)	
	)	
	)	
Plaintiffs,	)	8:05CV145
	)	
v.	)	
	)	
KDI OMAHA, and EATON HYDRAULICS, INC.,	)	MEMORANDUM AND ORDER
	)	
	)	
Defendants.	)	
	)	

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Billy Roy Tyler ("Tyler") has filed a motion to intervene herein and to certify a class. Filing 24. The plaintiff's suit alleges that the former owners of a manufacturing facility located at 6600 North 72<sup>nd</sup> Street in Omaha, Nebraska (Vickers, Inc., and its successor defendant Eaton Hydraulics, Inc.) polluted the soil and groundwater of this manufacturing site, and these environmental contaminants have migrated west of that site to the adjacent Stillmeadow neighborhood. The suit alleges that manufacturing site property is now owned by defendant KDI, Inc., which intends to construct a shopping center. The plaintiffs claim the proposed demolition, grading, and excavation work associated with this construction project will environmentally contaminate the property of those in the Stillmeadow neighborhood and others.

The plaintiffs have filed suit for prospective relief on behalf of themselves and, with court approval, similarly situated residents of the Stillmeadow neighborhood and "any other parties which may be adversely affected." The plaintiffs seek to enjoin KDI, Inc. from performing demolition, grading or excavation work on the former manufacturing site. They further seek a declaration that such conduct will endanger or damage the

Stillmeadow residents and others and, if conducted, the defendants should be jointly and severally liable for any resulting injury.

Tyler's motion to intervene claims that during the years when the alleged contamination occurred, he lived at 5006 Redick and 1451 Emmet and, prior to his incarceration, he lived in Omaha all his life. He claims the alleged contamination affected the whole city, especially the north, east and west portions of Omaha. He claims he has driven and walked past the site on numerous occasions, and in 1989 bought a house at 3308 North 57<sup>th</sup> Street in Omaha.

Tyler is presently an inmate at the Nebraska State Penitentiary in Lincoln. His motion to intervene does not state whether or when he will be released from that facility, or where he will actually live upon release. His motion to intervene does not state he currently owns any property in Omaha, or that he ever owned property in the Stillmeadows neighborhood or property west of the manufacturing site (3308 South 57<sup>th</sup> Street is east of the 72<sup>nd</sup> street location of the site). Accordingly to the plaintiffs' complaint, the ground water plume containing environmental contaminants at issue in the plaintiffs' lawsuit migrated west from the manufacturing site. Filing 1, complaint at ¶ 15.

Tyler may have a "legal domicile" in Omaha, but if he does not currently own property in Omaha, and does not currently or in the foreseeable future intend to or have the ability to live in Omaha, and specifically in the area which allegedly will be environmentally contaminated absent an injunction, he cannot claim he is at risk of irreparable harm arising from KDI's proposed construction on defendant Eaton's former manufacturing

site. The plaintiffs' underlying lawsuit will not affect any legally protected interest held by Tyler or Tyler's ability to protect his legally protected interests or rights. Tyler's motion to intervene must therefore be denied.

IT THEREFORE HEREBY IS ORDERED: The motion to intervene filed by Billy Roy Tyler, filing 24, is denied.

DATED this 26<sup>th</sup> day of July, 2005.

BY THE COURT:

s/ *David L. Piester*  
David L. Piester  
United States Magistrate Judge